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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,714	03/22/2004	Wilhelmus Joseph Leonardus Suyker	DVME-1003USDIV4	9243
21302 7590 02/17/2009 KNOBLE, YOSHIDA & DUNLEAVY EIGHT PENN CENTER SUITE 1350, 1628 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19103				
EXAMINER				
DANG, PHONG SON H				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
02/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/805,714

**Applicant(s)**

SUYKER ET AL.

**Examiner**

SON DANG

**Art Unit**

3773

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-30 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18, 22, 23, 28, 30 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date \_\_\_\_\_
- 6) ☐ Other: \_\_\_\_\_
- 7) ☐ Notices of Informal Patent Application
- 8) ☐ Paper No(s)/Mail Date See Continuation Sheet

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :03/22/2004, 05/03/2004, 05/28/2004.

**DETAILED ACTION**

1. The Amendment filed 04/30/2008 has been entered. Claims 15-30 and 42 remain pending in the application.

***Claim Objections***

2. Claims 15-30 and 42 are objected to because of the following informalities:  
These claim recited in the last paragraph of claim 15 that "wherein the distal arms support at least a portion of said hollow structures" that could be interpreted as human body parts in light of the description in the specification. The examiner suggested that the applicant change the claim language to "wherein the distal arms are adapted to support at least a portion of said hollow structures" so that it would not encompass 35 U.S.C. 101 issues. Claims 16-30 and 42 are directly or indirectly dependent from claim 15. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15-18, 22-23, 28, 30 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,387,235 to Chuter (Chuter).

In Reference to Claims 15-18, 22-23, 28, 30 and 42:

Chuter teaches:

An applicator for use in a system including joining elements for making an anastomosis between hollow structures, said applicator comprising: a head (Fig. 12) provided with a plurality of arms (15, Fig. 2), each said arm having a proximal end and a distal end, and wherein each said arm (15, Fig. 2) is movable from a first position (inside sleeve 4, Fig. 12) at which the distal ends of the arms are separated by a first distance, to a second position (after released out of sleeve 4, Fig. 15), at which the distal ends of said arms are separated by a second distance, the second distance being greater than the first distance (the spring 6 is expanded, Fig. 15); and a shank-like (21, Fig. 11) element associated with said head such that movement of one of said shank-like (21, Fig. 12) element and said head (4, Fig. 12), causes said arms (15, Fig. 2) to move from said first position (inside 4, Fig. 12) toward said second position (after released out of 4, Fig. 15), and wherein the distal ends of the arms (15, Fig. 2) support at least a portion of said hollow structures (upper and lower part of the aorta, Fig. 15) and hold said joining elements (1, Fig. 15) while positioning at least one said hollow structure relative to said joining elements (1, Fig. 15) for making an anastomosis between the hollow structures, and said positioning of said hollow structures is accomplished by moving said arms (15, Fig. 2, arms expanded to hold graft 1 in place) from said first position to said second position. A proximal portion of each said arm is attached to an attachment member (1, Fig. 15). At locations of attachment of said arms (15, Fig. 2) to said attachment member (1, Fig. 12), said arms are arranged around a portion of said shank-like element (21, Fig. 12) such

that relative movement of said head (4, Fig. 12) and said shank-like element (21, Fig. 12) expand the arms radially outwardly (Figs. 15), relative to an axis of said shank-like element (21, Figs. 14-15). Said arms (15, Fig. 2, inside sleeve 4, Fig. 12) expand from said first position (inside sleeve 4, Fig. 12) to said second position (after released out of sleeve 4, Fig. 15) by deformation (From compress configuration to expand configuration). Applicator further comprises a detainer (70, Fig. 13) for controlling movement of said joining elements (so that the graft can not slide backward from tube 4). The detainer (70, Fig. 13) comprises a plurality of surface portions (superior and inferior surfaces, Fig. 13) positioned to engage surface portions of said joining elements (graft 1) to thereby limit the movement (so that the graft can not slide backward from sleeve 4) of said joining elements (graft 1) relative to the detainer (70, Fig. 13). A plurality of surface portions (inside of sleeve 4, Fig. 12) positioned to limit the extent of movement of said arms (15, Fig. 2). Surface portions (inside of sleeve 4, Fig. 12) positioned to limit the extent of movement of said arms (15, Fig. 2) form part of said head (sleeve 4, Fig. 12). The first distance (where line BB is, Fig. 2) of separation between said arms (15, Fig. 2) is less than a distance of separation between the proximal ends (where line AA and tip 13 are, Fig. 2) of said arms (15, Fig. 2) when said arms are in the first position (inside sleeve 4, Fig. 12).

***Allowable Subject Matter***

5. Claims 19-21, 24-27, 29 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claims 15-30 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,669,918 to Balazs et al. teaches a surgical instrument for preparing an anastomosis in minimally invasive surgery.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD  
/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773



